

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Joe ROSALES

20 CV 2136

Petitioner,

v.

Warden J. Petrucci

PETITION FOR A
WRIT OF HABEAS
CORPUS UNDER
28 U.S.C. § 2241

Civ. ()

Respondent(s).

YOU MUST COMPLETE THIS ENTIRE FORM

RECEIVED
SDNY PRO SE OFFICE
2020 MAR -9 AM 10:50

1. Parties in this Petition:

- a. You are the Petitioner. List your name and address. If you are currently in custody, include your identification number and the name and address of your current place of confinement.

Petitioner's Name: Joe ROSALES

Prisoner ID #: 56669177

Alien #: N/A

Current Institution: FCI Otisville, NY

Address: PO Box 1000

Otisville NY 10963-1000

- b. List all Respondents by name, position, and place of employment. Make sure that the respondent(s) listed below are identical to those contained in the above caption. Attach additional pages of paper if necessary.

Respondent No. 1

Name: J. Petrucci - Warden

Where Currently Employed: FCI Otisville

Address: PO Box 600

Otisville NY 10963-0600

Respondent No. 2

Name: _____

Where Currently Employed : _____

Address: _____

Respondent No. 3

Name: _____

Where Currently Employed : _____

Address: _____

Respondent No. 4

Name: _____

Where Currently Employed: _____

Address: _____

2. This petition concerns (check one):

- a. ☐ a conviction and/or a sentence
 b. ☐ calculation of sentence
 c. ☐ parole
 d. ☐ prison disciplinary proceeding
 e. ☐ detainer
 f. ☒ other (explain) "Extra" Good Time under "First Step Act"

3. Provide the following information regarding the conviction(s) and sentence(s) for which you are currently incarcerated.

a. Name(s) and location(s) of court: USDC - N.D. TXb. Case Number(s): 4:18-CR-00053-A (01)c. Charge(s) of which you were convicted: 21 USC 846 - Drug Conspiracy
21 USC 841 - Drug Possess

d. What was your plea?

- (1) Not guilty ☐
 (2) Guilty ☒
 (3) Nolo contendere ☐

e. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

4. If you did appeal, answer the following:

a. Name of court: USCA - 5TH Case #: 18-11302b. Result: Denied - 4 Sept 2019

a. Ground One: In violation of the law - and due process - the BOP has misclassified me (under "PATTERN" Risk & Needs Assessment) as having a "Medium" risk of recidivism wrongfully eliminating my "EXTRA" time credits under 18 USC § 3632(d)(4)(A)(ii)

Supporting FACTS: The BOP has formally refused to provide an "itemized" copy of my "PATTERN" SCORE so I can challenge the mistakes which caused me to be a "Medium." This makes me ineligible for the extra time credits I have already earned - due to my programming - and makes me ineligible for future credits too. Also it makes me ineligible for credit for "Productive Activities" I have already done and will do in the future. I am also now relegated to inferior, less safe prison placement - under § 3632(b) - than I would be eligible for with Exhaustion: my correct - lower - PATTERN score.

(1) Have you presented Ground One to the Bureau of Prisons either through the prison grievance system or other administrative proceeding?

Yes ☒ No ☐

If yes, please provide the results of the proceeding(s) and the relevant date(s),

including any appeals; if no, please explain why not: I was told any appeal

would be futile - what they are doing is unchangeable, official BOP Policy. Staff has not timely responded to informal resolution efforts, making any grievance, untimely and impossible to file. Staff said they would "look into" my concerns - leaving me with nothing further to grieve.

Ground Two:

In violation of the law - and due process - the BOP is not providing me with the 18 USC § 3632(d) Incentives for Both Evidence Based Programming AND Productive Activities - as defined by § 3635(3) that I have taken and continue to take - that qualify me for these incentives, including time credits under § 3632(d)(4)(A).

Supporting FACTS: I have completed - and continue to participate in - many qualifying programs, yet I have received NONE of the incentives contained in the law. The BOP also has created their own list of qualifying programs/activities which does NOT include all of those provided under the law - and which I have completed, am participating in now, or am contemplating participating in.

Exhaustion:

(1) Have you presented Ground Two to the Bureau of Prisons either through the prison grievance system or other administrative proceeding?

Yes ☒ No ☐

If yes, please provide the results of the proceeding(s) and the relevant date(s), including any appeals; if no, please explain why not: (see ground one)

- c. Ground Three: In violation of my due process rights, and BOP Policy - Program Statement 5100.08 [Inmate Classification] - the BOP has wrongly calculated my security points - making me ineligible for a lower security prison transfer - including those under § 3632(d)(2)

Supporting FACTS: Several items, including my Criminal History score, were miscalculated. The BOP was aware of the facts underlying this miscalculation but did not correct the scoring or following their own rules/policies. Because of this I cannot get to a better, lower security, safer, prison closer to my Abilene, Texas home, which offers more FSA-eligible programs/activities. The BOP is also not considering me for a § 3632(d)(2) transfer despite my past and current participation in qualifying § 3635(3) programs Exhaustion: and activities.

(1) Have you presented Ground Three to the Bureau of Prisons either through the prison grievance system or other administrative proceeding?

Yes ☒ No ☐

If yes, please provide the results of the proceeding(s) and the relevant date(s), including any appeals; if no, please explain why not: (see ground one)

- d. Ground Four: _____
-
-
-
-

Supporting FACTS: _____

Exhaustion:

(1) Have you presented Ground Four to the Bureau of Prisons either through the prison grievance system or other administrative proceeding?

Yes ☐ No ☐

If yes, please provide the results of the proceeding(s) and the relevant date(s), including any appeals; if no, please explain why not: _____

10. Based on the grounds raised above, what are you asking the Court to do?

Order BOP to allow me to review my itemized "PATTERN"
Score and correct the errors; provide retroactive time credits;
provide retroactive (and/or) compensatory incentives for all programs valid
under the law; correct my security level; consider me for a transfer;
and all other available relief

DECLARATION

I declare under the penalty of perjury that I have read the above and the information contained in this petition is true and correct.

2 March 2020
(Date)



Signature of Petitioner

IF MAILED BY PRISONER:

I declare under the penalty of perjury that this Petition was (check one):

☒ delivered to prison officials for mailing or ☐ deposited in the prison's internal mail system on

2 March 2020
(Date)


Signature of Petitioner

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

DEFENDANTS

J. PETRUCCI

ATTORNEYS (IF KNOWN)

US Attorney - S.D. NY

28 USC § 2241

If yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

NATURE OF SUIT

FOETS

ЗАКЛУЧОК

OTHER STATUTES

PERSONAL INJURY

PERSONAL INJURY

[] 630 AGRICULTURE

[] 422 APPEA

[] 400 STATE

[]	310	AIRPLANE
[]	315	AIRPLANE PRODUCT LIABILITY
[]	320	ASSAULT, LIBEL & SLANDER
[]	330	FEDERAL EMPLOYERS' LIABILITY
[]	340	MARINE
[]	345	MARINE PRODUCT LIABILITY
[]	350	MOTOR VEHICLE
[]	355	MOTOR VEHICLE PRODUCT LIABILITY
[]	360	OTHER PERSONAL INJURY

[] 362 PERSONAL INJURY -
MED MALPRACTICE

[] 365 PERSONAL INJURY
PRODUCT LIABILITY

[] 368 ASBESTOS PERSONAL
INJURY PRODUCT
LIABILITY

PERSONAL PROPERTY

[] 370 OTHER FRAUD

[] 371 TRUTH IN LENDING

[] 380 OTHER PERSONAL
PROPERTY DAMAGE

[] 385 PROPERTY DAMAGE
PRODUCT LIABILITY

() 620 OTHER FOOD &
DRUG
() 625 DRUG RELATED
SEIZURE OF
PROPERTY
21 USC 881
() 630 LIQUOR LAWS
() 640 RR & TRUCK
() 650 AIRLINE REGS
() 660 OCCUPATIONAL
SAFETY/HEALTH
() 690 OTHER

28 USC 158
[] 423 WITHDRAWAL
28 USC 157

PROPERTY RIGHTS

[] 820 COPYRIGHTS
[] 830 PATENT
[] 840 TRADEMARK

- [410 ANTI TRUST
- [430 BANKS & BANKING
- [450 COMMERCE
- [460 DEPORTATION
- [470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- [480 CONSUMER CREDIT
- [490 CABLE/SATELLITE TV
- [810 SELECTIVE SERVICE
- [890 SECURITIES/COMMODITIES/EXCHANGE
- [875 CUSTOMER CHALLENGE
- [12 USC 3410
- [890 OTHER STATUTORY

SOCIAL SECURITY

LABOR

[] 710 FAIR LABOR
STANDARDS ACT

[] 720 LABOR/MGMT
RELATIONS

[] 730 LABOR/MGMT
REPORTING &
DISCLOSURE AC

[] 740 RAILWAY LABOR

[] 790 OTHER LABOR
LITIGATION

[] 791 EMPL RET INC
SECURITY ACT

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[ ] 861 HIA (1395f)
[ ] 862 BLACK LUNG (923)
[ ] 863 DIWC/DIWW (405(g))
[ ] 864 SSID TITLE XVI
[ ] 865 RSI (405(g))
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FEDERAL TAX SUITS

T [] 870 TAXES (U.S. Plaintiff or Defendant)
[] 871 IRS-THIRD PARTY
26 USC 7609

- [891 AGRICULTURAL ACTS
- [892 ECONOMIC
- [893 STABILIZATION ACT
- [894 ENVIRONMENTAL
- [895 MATTERS
- [896 ENERGY
- [897 ALLOCATION ACT
- [898 FREEDOM OF
- [899 INFORMATION ACT
- [900 APPEAL OF FEE
- [901 DETERMINATION
- [902 UNDER EQUAL ACCESS
- [903 TO JUSTICE
- [904 CONSTITUTIONALITY
- [905 OF STATE STATUTES

ACTIONS UNDER STATUTES

CIVIL RIGHTS

PRISONER PETITIONS

REAL PROPERTY

[] 210 LAND CONDEMNATION

[] 220 FORECLOSURE

[] 230 RENT LEASE &
EJECTMENT

[] 240 TORTS TO LAND

[] 245 TORT PRODUCT
LIABILITY

[] 290 ALL OTHER
REAL PROPERTY

[] 441 VOTING
[] 442 EMPLOYMENT
[] 443 HOUSING/
ACCOMMODATIONS
[] 444 WELFARE
[] 445 AMERICANS WITH
DISABILITIES -
EMPLOYMENT
[] 446 AMERICANS WITH
DISABILITIES -OTHER
[] 440 OTHER CIVIL RIGHTS

[] 510 MOTIONS TO
VACATE SENTENCE
20 USC 2255
X [] 530 HABEAS CORPUS
[] 535 DEATH PENALTY
[] 540 MANDAMUS & OTHER
[] 550 CIVIL RIGHTS
[] 555 PRISON CONDITION

IMMIGRATION

[] 462 NATURALIZATION
APPLICATION
[] 463 HABEAS CORPUS-
ALIEN DETAINEE
[] 465 OTHER IMMIGRATION
ACTIONS

Check if demanded in complaint

☐ CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?
IF SO, STATE:

DEMAND \$ _____ OTHER _____

JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: ☐ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN X IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding
- ☐ 2a. Removed from State Court
- ☐ 2b. Removed from State Court AND at least one party is pro se.
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from (Specify District)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN X IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
- ☒ 2 U.S. DEFENDANT
- ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1322, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

N/A

CITIZEN OF THIS STATE	PTF DEF <input checked="" type="checkbox"/> []	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] []	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] []
CITIZEN OF ANOTHER STATE	[] []	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] []	FOREIGN NATION	[] []

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

#56669177 (FCI Otisville)
PO Box 1000
Otisville NY 10963-1000

(County of Orange)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

FCI Otisville - Warden's Office
PO Box 600
Otisville NY 10963-0600

(County of Orange)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

N/A

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☐ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION.)

DATE: 2 March 2020 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

☒ NO☐ YES (DATE ADMITTED Mo. ____ Yr. ____)

RECEIPT #

Attorney Bar Code #

(pro se)

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Please send me my
Case # and I will send
a US Treasury check for \$5
from my account.

Thanks

es #56669177
correctional institution

410963-1000

2020 MAR -9 AM 10:01

UNITED STATES DISTRICT COURT

PRO SE OFFICE — Room 230

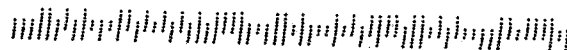
500 PEARL Street

NY NY

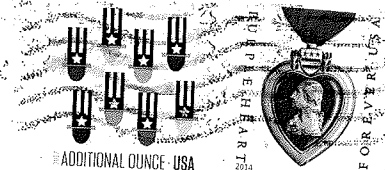
10007

MAIL

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WESTCHESTER NY 105
MAR 11 2020
SDNY



ADDITIONAL OUNCE - USA

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FOREVER USA